Office-Supreme Court, U.S
FILED
NOV 8 1962
JOHN F. DAVIS, CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. **582**

WILLIAM K. WILLIAMSON AND GENEVA M. WILLIAMSON,
Appellants,
vs.
HOPEWELL REDEVELOPMENT AND HOUSING AUTHORITY,
Appellee.

J. W. GARRETT AND ANNIE B. GARRETT,
Appellants,
vs.
HOPEWELL REDEVELOPMENT AND HOUSING AUTHORITY,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

JURISDICTIONAL STATEMENT

LEWIS S. PENDLETON, JR.
200 Travelers Building
Richmond 19, Virginia
Counsel for Appellants

INDEX
AND
TABLE OF CITATIONS

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Questions Presented	3
Statutes Involved	3
Statement of Case	3
The Questions are Substantial	5
Appendix A	11
Appendix B	16

TABLE OF CITATIONS

Cases

Albin v. Consolidated School District, 184 N.W. 141 .. 8

Commonwealth Bank of Kentucky v. Griffith, 14 Pet. (39 U.S.) 56 ..... 2, 6

Donahy v. Rogers, 281 U.S. 362 7

Mississippi and Missouri Railway Co. v. Rock, 4 Wall. (71 U.S.) 177 ..... 3, 6

North Laramie Land Bank Co. v. Hoffman, 268 U.S. 276 8

People v. Tallman, 36 Barb. 222 (N.Y. 1862) 7

Powell v. Brunswick County, 140 U.S. 433 3

Sterritt v. Young, 14 Wyo. 146 7

Walker v. Taylor, 5 How. (46 U.S.) 64 ..... 2, 6

Statutes

25-1 through 25-55 of the Code of Virginia of 1950, as amended 2

25-10 of the Code of Virginia of 1950, as amended 6

25-12 of the Code of Virginia of 1950, as amended 6

25-13 of the Code of Virginia of 1950, as amended 3

22-252 of the Code of Virginia of 1950, as amended 3

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. ——

WILLIAM K. WILLIAMSON AND GENEVA M. WILLIAMSON,
Appellants,

vs.

HOPEWELL REDEVELOPMENT AND HOUSING AUTHORITY,
Appellee.

J. W. GARRETT AND ANNIE B. GARRETT,
Appellants,

vs.

HOPEWELL REDEVELOPMENT AND HOUSING AUTHORITY,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Appeals of Virginia, entered on June 11, 1962, affirming the entry of a final order of the Circuit Court of the City of Hopewell, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial Federal question is presented.

OPINION BELOW

The opinion of the Supreme Court of Appeals of Virginia is reported in 203 Va. 653. The opinion of the Circuit Court of the City of Hopewell is not reported. Copies of the opinion, findings of fact, conclusions of law and judgment, are attached hereto as Appendix A.

JURISDICTION

Suit was brought under the provisions of Section 25-1, et. seq., Code of Virginia of 1950, as amended, by the appellee to condemn certain land of the appellants under the right of eminent domain. The judgment of the Supreme Court of Appeals of Virginia was entered on June 11, 1962, and notice of appeal was filed in the Circuit Court of the City of Hopewell, which held the record, on September 10, 1962. The jurisdiction of the Supreme Court to review the judgment on direct appeal in this case is based on the following decisions: *Commonwealth Bank of Kentucky* v. *Griffith*, 14 Pet. (39 U.S.) 56, 10 L. Ed. 352; *Walker* v. *Taylor*, 5 How. (46 U.S.) 64, 12 L. Ed. 52; *Mississippi and Missouri Railway Co.* v. *Rock*,

4 Wall. (71 U.S.) 177, 18 L. Ed. 48; *Powell v. Brunswick County*, 150 U.S. 433, 37 L. Ed. 1134.

QUESTIONS PRESENTED

1. Does the condemnation proceeding provided by Section 25-1, et. seq., of the Code of Virginia of 1950, as amended, afford sufficient notice to comply with the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution?

2. Does the condemnation procedure provided by Section 25-1, et. seq., of the Code of Virginia of 1950, as amended, afford sufficient opportunity to be heard so as to comply with the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution?

STATUTES INVOLVED

Section 25-1 through 25-55 and 22-252 of the Code of Virginia of 1950, as amended, provide the condemnation procedure employed by the Appellee. The constitutionality of the procedure provided by these statutes and particularly of Section 25-13 of such Code is questioned. The full text of the latter section is as follows:

> "In the order appointing such commissioners the court, or judge in vacation, shall designate the day and hour for them to meet, which order shall operate as notice of such meeting to all parties in interest."

STATEMENT OF THE CASE

The Hopewell Redevelopment and Housing Authority, hereinafter called appellee, a political subdivision of the

Commonwealth of Virginia, filed its petition to condemn the land of the appellants on November 14, 1960, pursuant to the provisions of Section 25-1, et seq., of the Code of Virginia, of 1950, as amended. Copies of the petition with subpoenas in chancery attached, and a notice that the appellee would apply to the Circuit Court of the City of Hopewell for the appointment of commissioners to ascertain a just compensation for the land proposed to be condemned and to award damages, if any, resulting to the residue, were served on the appellants on November 15, 1960. (See appellants' Appendix B, copy of notice.) Thereafter, on the 5th day of December, 1960, the appellee, pursuant to its notice, moved the court for the appointment of commissioners. Five freeholders of the City of Hopewell were appointed commissioners by order of the court, dated December 5, 1960, which said order also designated December 12, 1960, as the date of the meeting of commissioners. The commissioners met on the 12th day of December, 1960, and filed their report on December 12, 1960. On December 15, 1960, the appellee paid into court the amount the commissioners awarded. On December 27, 1960, grounds of defense and an order permitting its late filing were tendered to the court in behalf of the appellants and marked refused. On January 18, 1961, the appellants filed their exceptions to the report of the commissioners and also filed a motion to vacate and dismiss the order appointing commissioners. Paragraph 4 of the motion to vacate and dismiss the order stated that the notice and opportunity to be heard provided for by Section 25-13 of the Code of Virginia of 1950, as amended, were not sufficient to meet the requirements of due process of law. On January 25, 1961, the Circuit Court of the City of Hopewell entered an order overruling the motion to vacate and dismiss the order appointing commissioners. This is set

out in the second paragraph of the order found in the record and states as follows:

> "And the court having heard the arguments of counsel on said motion doth overrule said motion to which ruling of the court the defendants, by counsel, object and except."

The appellants appealed to the Supreme Court of Appeals of Virginia from the order overruling the motion to vacate and dismiss the appointment of commissioners. In an opinion, dated June 11, 1962, by Justice Harold F. Snead, the Supreme Court of Appeals affirmed the order of the lower court. The opinion cites several Virginia cases involving the question of due process of law with regard to notice and opportunity to be heard. These cases set out the proposition that the state legislature could prescribe the kind and form of notice as long as the notice prescribed was reasonable under all the circumstances. In the next to last paragraph of the opinion, the court said that the appellants did have a reasonable notice and a reasonable opportunity to be heard at the commissioners' hearing and that Section 25-13 of the Code of Virginia of 1950, as amended, does not offend either the Constitution of Virginia or the Constitution of the United States.

THE QUESTIONS ARE SUBSTANTIAL

The questions involved in this appeal are important not only to the appellants but also to the citizens of other states that have statutory condemnation proceedings similar to Virginia. It is the appellant's contention that the form of notice provided by Section 25-13 of the Code of Virginia, 1950, as amended, does not comply with due process of law

as required by the Fourteenth Amendment of the United States Constitution.

The jurisdictional requirements are present. The validity of a state statute is drawn in question. It is drawn in question on the ground that it is repugnant to the United States Constitution. The Supreme Court of Appeals of Virginia has held in favor of the validity of the statute. See *Commonwealth Bank of Kentucky* v. *Griffith*, 14 Pet. (39 U.S.) 56, 10 L. Ed. 352; *Walker* v. *Taylor*, 5 How. (46 U.S.) 64, 12 L. Ed. 52; *Mississippi and Missouri Railway Co.* v. *Rock*, 4 Wall. (71 U.S.) 177, 18 L. Ed. 48; *Powell* v. *Brunswick County*, 150 U.S. 433, 37 L. Ed. 1134.

The Federal question presented is substantial. The only notice provided for by the Virginia statute is notice by the condemning authority of its intention to apply for the appointment of commissioners to appraise the property. (See Section 25-10 of the Code of Virginia, as amended.) After this the proper court or the judge thereof in vacation shall appoint the commissioners. (See Section 25-12 of the Code of Virginia of 1950, as amended.) Section 25-13 of the Code of Virginia, 1950, as amended, provides that:

> "In the order appointing such commissioners, the court, or judge in vacation, shall designate the day and hour for them to meet, which order shall operate as notice of such meeting to all parties in interest."

The order is entered in the order book. However, in Virginia, each circuit consists of several counties. As a result the circuit court judge may be in vacation in the county where the condemnation suit is being brought, while he

is hearing cases in another county. Thus, the judge in vacation could conceivably enter an order appointing commissioners (which is "notice" of the time of the meeting of the commissioners) and the order would not be entered in the order book where the suit is being brought until the commissioners have already met. Therefore, it can readily be seen that although the state statute provides for notice of the institution of the condemnation proceedings, there is not sufficient notice of the meeting of the commissioners which is of utmost importance to the landowner.

It is fundamental law that notice is necessary for due process. The notice must be reasonable and adequate for the purposes, due regard being had for the nature of the proceedings and the character of the rights being effected. *Donahy* v. *Rogers*, 281 U.S. 362, 50 Sup. Ct. 410.

The appellants contend that the notice of intention to apply for the appointment of commissioners provided by the Virginia statute is not sufficient. There is ample authority to the effect that there must not only be notice of the institution of condemnation proceedings but also notice of when and where the commissioners will meet to determine the value of the property to be taken. In *Sterritt* v. *Young*, 14 Wyo. 146, 82 Pac. 946, it was held that notice of the hearing for fixing the damages must be given; it is not enough that there is notice of the time when the appraisers will be appointed. In *People* v. *Tallman*, 36 Barb. 222 (N.Y. 1862) the court said that this notice cannot be avoided on the ground that the appointment of commissioners is all part of one continuous transaction beginning with the notice of intention to appoint commissioners and thereby making such first notice sufficient for the whole

period. In *Albin* v. *Consolidated School District*, 184 N.W. 141, the Nebraska statute fixed no notice of the time and place where the appraisers shall meet for the purpose of assessing damages. The Supreme Court of Nebraska held the statute to be unconstitutional as violating the requirements of due process of law.

Although the appellants concede that the United States Constitution does not guarantee any particular type of notice in eminent domain proceedings and that constructive notice will conform to due process of law, all the cases upholding constructive notice have been where the statute provides for publication of notice in the newspaper for a certain period of time. However, the Virginia statute does not guarantee that the meeting of commissioners will be given as much publicity as if it were published in the newspaper. It is the contention of the appellants that the procedure outlined by the Virginia statutes is not reasonably calculated to bring the time and place of the meeting of the commissioners to the attention of the landowners. A landowner is entitled to such notice as will give him an opportunity to be present at the hearing and to submit such evidence as he may have. *North Laramie Land Bank Company* v. *Hoffman*, 268 U.S. 276, 45 Sup. Ct. 491. The Appellants submit that the reasonable landowner would ordinarily have little interest in the appointment of commissioners, but would be vitally interested in the action the commissioners would take in regard to their property, and as to the latter proposition the notice is silent. The notice did not say that it was the final notice and a layman would not be reasonably apprised of the facts so as to give him an opportunity to be present at the hearing.

Although the statutes providing for condemnation pro-

cedure in Virginia have been repealed since the taking of the appellants' land, the said statutes were in full force and effect at the time of the taking which resulted in loss of substantial rights by the appellants and by all others similarly situated. Also, there may be other states with statutes similar to the Virginia statutes and the citizens of those states are affected by the issues presented here.

In conclusion, the appellants would like to reiterate that sufficient notice is necessary for due process; that the Virginia statutes do not provide for sufficient notice; and that the rights of the appellants to due process of law were denied as a result. They believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

Counsel for Appellants
200 Travelers Building
Richmond 19, Virginia

APPENDIX A

Present: All the Justices.

Record No. 5423

WILLIAM K. WILLIAMSON, ET AL.

v.

HOPEWELL REDEVELOPMENT AND HOUSING AUTHORITY

OPINION BY JUSTICE HAROLD F. SNEAD
Richmond, Virginia—June 11, 1962

FROM THE CIRCUIT COURT OF THE CITY OF HOPEWELL

J. J. TEMPLE, *Judge*

William K. and Geneva M. Williamson, husband and wife, appealed from the entry of a final order in a condemnation proceeding brought by Hopewell Redevelopment and Housing Authority, a political subdivision of this Commonwealth, to condemn Lots 11, 12 and 13, Block 5, Hopewell Park Subdivision, in the City of Hopewell, owned by the Williamsons. The order overruled the Williamsons' motion to vacate the order appointing the commissioners and to dismiss the proceeding and also overruled their exceptions to the commissioners' report. It approved, ratified and confirmed the report in all respects and confirmed unto the Authority the fee simple title to the property.

The Authority, pursuant to the provisions of § 25-1, *et seq.*, Code 1950, filed its petition to condemn the unimproved lots on November 14, 1960. Copies of the petition with subpoenas in chancery attached, together with the notice of the Authority stating that it would apply to the Circuit Court of the City of Hopewell at 10 a.m. on December 5, for the appointment of commissioners to ascertain a just compensation for the land proposed to be condemned and to award damages resulting to the residue, if any, were duly served upon the Williamsons on November 15. Neither the Williamsons nor their attorney appeared at the stated time for the appointment of commissioners and the court, upon motion of the Authority, appointed five disinterested freeholders residing in the city to act as such.

The order provided, among other things, that the commissioners should meet at 10 a.m. on December 12, at the Courthouse, view the property, hear proper evidence of any person affected, ascertain a just compensation for the land proposed to be taken, assess damages, if any, resulting to the residue, and make a report thereof. Pursuant to these directions the commissioners met at the fixed time and place, viewed the land, heard evidence presented, ascertained that a just compensation for the lots to be condemned was $750 and assessed no damages to the adjacent property. Their report was filed on December 13. The Williamsons did not appear at this hearing and they offered no evidence.

On December 15, the Authority paid into court the amount of the award, and on December 27, counsel for the Williamsons tendered to the court their grounds of defense, together with an order permitting its late filing.

which was marked "refused". On January 11, 1961, the Williamsons filed their exceptions to the commissioners' report, and one week later filed their motion to vacate the order appointing the commissioners and to dismiss the proceeding. After hearing arguments of counsel, the court, by its order of January 25, overruled the motion and exceptions to the commissioners' report.

The jurisdiction of courts over eminent domain proceedings is purely statutory and the statutes must be strictly construed and followed. *West v. Anderson*, 186 Va. 554, 561, 42 S. E. 2d 876. Counsel for appellants conceded at the bar of this court that the proceedings had conformed to the requirements of the applicable statutes.

The Williamsons, however, challenge the constitutionality of § 25-13, which provides that the order which appoints the commissioners and fixes the time for them to meet shall operate as a notice of such meeting to all parties in interest. They also contend that the proceedings did not comply with the Rules of Court, which, they say, supersede the statutory requirements.

Section 25-13 reads:

> "In the order appointing such commissioners the court, or judge in vacation, shall designate the day and hour for them to meet, which order shall operate as notice of such meeting to all parties in interest."

Appellants argue that this section does not satisfy the constitutional requirement for due process of law as to notice and an opportunity to be heard.

In *John Doe* v. *Thomas Preston Brozen*, 203 Va. 125 S. E. 2d 159, (decided April 23, 1962) we had occasion to discuss "due process of law" with regard to notice and an opportunity to be heard. There we said:

> "It is universally recognized that 'due process of law' requires that a person be given notice and a reasonable opportunity to be heard before an impartial tribunal before any binding decree or order may be entered affecting his right to liberty or property. But this does not mean that the legislature in its discretion may not prescribe the kind of notice and the manner in which it shall be given if it is reasonable under all the circumstances and affords the party affected a reasonable opportunity to be heard. *Violett* v. *City Council of Alexandria*, 92 Va. 561, 567, 570, 23 S. E. 909, 912, 53 Am. St. Rep. 825, 31 L. R. A. 382; *Ward Co.* v. *Henderson-White Co.*, 107 Va. 626, 630, 631, 635, 59 S. E. 476, 478, 480; *A. S. White & Co.* v. *Jordan*, 124 Va. 465, 466-471, 98 S. E. 24."

In *Dohany* v. *Rogers*, 281 U. S. 362, 369, 50 S. Ct. 299, 74 L. ed. 904, 68 A. L. R. 434, the court stated:

> "The due process clause does not guarantee to the citizen of a state any particular form or method of state procedure. Under it he may neither claim a right to trial by jury nor a right of appeal. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it." (Citing cases.)

Here, the Williamsons were duly served with a copy of the petition for condemnation and a notice of the Authority's intention to apply to the Circuit Court of the City of Hopewell on the designated day and hour for the appointment of commissioners to ascertain the value of the land proposed to be condemned and damages to the residue, if any. § 25-10. The subpoena in chancery should not have been issued and attached to the petition, but it was mere surplusage and of no effect. The Williamsons failed to appear at this hearing, and pursuant to § 25-13, *supra*, the court fixed the day and hour for the appointed commissioners to meet to ascertain the value of the land, all of which was a matter of record. Yet, the Williamsons did not interest themselves to inquire as to what had transpired at the hearing. They made no appearance in the case until 14 days after the commissioners had made their report and 12 days after the Authority had deposited in court the amount fixed by the commissioners. It can hardly be said that the appellants did not have reasonable notice and a reasonable opportunity to be heard at the commissioners' hearing. We hold that § 25-13 does not offend either the Constitution of Virginia or the Constitution of the United States for lack of due process as to notice and an opportunity to be heard.

Finally, it is contended that the Rules of Court supersede the statutes, and that the proceedings had were in conflict with the Rules. The ready answer to this contention is that the Rules of Court do not apply to eminent domain proceedings. Rule 3:1. That being the case the statutes governing procedure in such cases control.

For the reasons stated, the order appealed from is

Affirmed.

APPENDIX B

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL

HOPEWELL REDEVELOPMENT AND HOUSING AUTHORITY
Complainant

vs.

In Chancery

NOTICE

WILLIAM K. WILLIAMSON and GENEVA M. WILLIAMSON
223 S. 9th Street
Hopewell, Virginia
Defendants

To: William K. Williamson and
Geneva M. Williamson
223 S. 9th Street, Hopewell, Virginia

You are hereby notified that the Hopewell Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia, will at 10 o'clock A. M. on the 5th day of December, 1960, or as soon thereafter as counsel may be heard, apply to the Circuit Court of the City of Hopewell, Virginia at the Courthouse thereof in the City of Hopewell, Virginia, for the appointment of Commissioners to ascertain what will be a just compensation for the land or for the interest or estate therein

proposed to be condemned for the use of the Hopewell Redevelopment and Housing Authority in the serving of the public, and to award the damages, if any, resulting to the adjacent or other property owned by you or the property of any other person beyond the peculiar benefits that will accrue to you respectively from the construction and maintenance of the work or improvement proposed to be done or made by the Hopewell Redevelopment and Housing Authority upon, over and across those certain lots or parcels of land described in the petition filed in said Court, to which reference is hereby made, the said lots being as follows:

Lots 11, 12 and 13, Block 5

according to a plat and survey of Hopewell Park Subdivision of the City of Hopewell, made by L. Douglas Pritchard and of record in the Clerk's office of this Court in Plat Book 5 at page 49, reference to which is hereby made.

The ownership, location and description of the said property and the peculiar nature of the work will more fully appear by reference to said petition filed in the office of the Clerk of this Court.

HOPEWELL REDEVELOPMENT & HOUSING AUTHORITY

By Counsel JAMES E. CUDDIHY

J. E. CUDDIHY, *p. q.*
State Planters Bank Building
Hopewell, Virginia